

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

Ronald Joseph Smith

Debtor(s).

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Case No.: 19-40227

Chapter 13

Judge Russ Kendig

**MOTION TO VACATE DISMISSAL ORDER PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 60(B)**

Now comes U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to Lasalle Bank National Association, as trustee, on behalf of the holders of the Bear Stearns Asset Backed Securities I Trust 2004-HE5, Asset-Backed Certificates, Series 2004-HE5 ("Creditor"), by and through its mortgage servicing agent Select Portfolio Servicing, Inc., by and through undersigned counsel and respectfully moves this Court for an Order to Vacate the Dismissal Order Pursuant to Federal Rule of Civil Procedure 60(b) entered in this bankruptcy case on February 25, 2019, Docket number 16. In support of its motion, Creditor states as follows:

1. On February 19, 2019, the day of Creditor's foreclosure sale, Ronald Joseph Smith ("Debtor") filed for relief under Chapter 13 of the United States Bankruptcy Code in bankruptcy case 19-40227. This is Debtor's 3rd Chapter 13 bankruptcy since 2007, all of which were dismissed prior to confirmation. Debtor only filed a Plan in one of the cases.
2. Creditor believes that the present case is an attempt to delay and hinder Creditor's attempt to sell the Property as a Voluntary Motion to Dismiss the case was filed six

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(6) days after the present case was filed, which resulted in another foreclosure sale being cancelled. Thus, Creditor requests that the Dismissal Order be Vacated so that a Motion for Relief from Stay requesting *in rem* relief from stay can be filed to avoid further fraud and delay.

3. Creditor believes that there are grounds for relief from the dismissal order under F.R.C.P. 60(b)(3) and (6) as Debtor's actions are an attempt to delay and hinder Creditor's foreclosure action and is justifiable based on the mortgage fraud scheme perpetrated by Debtor in this case and in the prior bankruptcy cases.

WHEREFORE, Creditor respectfully requests that this Court enter an order vacating the dismissal order in this case such that Creditor may file a Motion for Relief from Stay with a request for *in rem* relief and for any other relief that this court may deem just and proper.

Respectfully submitted,

/s/Stephen R. Franks
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The case attorney for this file is Stephen R. Franks.
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CERTIFICATE OF SERVICE

This is to certify that on March 27____, 2019, a true and accurate copy of the foregoing Motion to Vacate Dismissal Order was served:

Via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

Office of U.S. Trustee, Northern District of Ohio, Party of Interest, (Registered address)@usdoj.gov

Michael A. Gallo, Chapter 13 Trustee, mgallo@gallotruster.com

and on the below listed parties by regular U.S. mail, postage prepaid:

Ronald Joseph Smith and Nancy L. Smith, 1625 Gully Top Lane, Canfield, OH 44406

/s/Stephen R. Franks

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